

ESTTA Tracking number: **ESTTA178263**

Filing date: **12/03/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	American Deli Plus, Inc.
Granted to Date of previous extension	12/01/2007
Address	2801 Candler Road Suite 18 Decatur, GA 30034 UNITED STATES

Correspondence information	American Deli Plus, Inc. 2801 Candler Road Suite 18 Decatur, GA 30034 UNITED STATES pkim@lockelord.com Phone:404-870-4600
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Applicant Information

Application No	78755527	Publication date	10/02/2007
Opposition Filing Date	12/03/2007	Opposition Period Ends	12/01/2007
Applicant	Clean Pass of Atlanta 630 Indian Acres Ct Tucker, GA 30084 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: spicy chicken wings, prepared breaded chicken pieces and French fries
Class 030. All goods and services in the class are opposed, namely: hamburger sandwiches, submarine sandwiches, pizza, fried rice and bakery desserts

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	AMERICAN DELI (asserting common law rights)
Goods/Services	Spicy chicken wings, prepared breaded chicken pieces and french fries; hamburger sandwiches, submarine sandwiches, pizza, fried rice and bakery desserts.

Attachments	Am Deli Opposition.pdf (5 pages)(163209 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John W. MacPete/
Name	American Deli Plus, Inc.
Date	12/03/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/755527 for
AMERICAN DELI
Published in the *Official Gazette* on October 2, 2007
(Term for opposition having been extended to
December 3, 2007)

American Deli Plus, Inc.,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No.: _____
Yong Lee and Alexander Lee, d/b/a)	
Clean Pass of Atlanta,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

In the matter of the application of Yong Lee, Alexander Lee and/or Clean Pass of Atlanta (hereinafter "Applicant") for registration of the intent to use mark AMERICAN DELI, Application Serial No. 78/755527, published in the Official Gazette on October 2, 2007 ("Intent to Use Application"), Opposer American Deli Plus, Inc. believes that it will be damaged by registration of the mark shown in Serial No. 78/755527 and hereby opposes the same and states as follows in support of this Notice.

1. Opposer American Deli Plus, Inc. is a corporation organized and existing under the laws of Georgia located at 2801 Candler Road, Suite 18, Decatur, Georgia 30034.

2. American Deli Plus, Inc. and/or its related entities and affiliates (collectively "American Deli" or "Opposer") has used the AMERICAN DELI mark since in or about the

1980s and, consequently, owns common law rights to the mark(s) **AMERICAN DELI** (collectively, the “**AMERICAN DELI Marks**”).

3. Opposer has used the **AMERICAN DELI Marks** for, *inter alia*, restaurant services, including carry-out and dine-in restaurant services.

4. Opposer began promoting its services under the **AMERICAN DELI Marks** since in or about the 1980s, and has continuously used the marks in interstate commerce for more than seven (7) years. On information and belief, Opposer’s first use of the **AMERICAN DELI Marks** pre-date Applicant’s first (or any) use of the mark.

5. Opposer’s branded services are widely recognized and known and associated with restaurants. Moreover, Opposer and its **AMERICAN DELI Marks** have been featured extensively in advertising promoting the restaurant services and in combination with the advertising of shopping centers’ food courts and/or shopping plazas, including dining guides and online blogs that provide actual customer’s reviews of the services.

6. Since its initial adoption and use of the **AMERICAN DELI Marks**, Opposer has made a substantial investment in advertising and marketing its services under the **AMERICAN DELI Marks**. Opposer has used, advertised, promoted and offered for sale Opposer’s services under the **AMERICAN DELI Marks** by continuing to expand the number of restaurant locations. As a result of Opposer’s use and promotion of the **AMERICAN DELI Marks**, the **AMERICAN DELI Marks** have become well-known in interstate commerce.

7. On information and belief, on November 16, 2005, Applicant filed Application Serial No. 78/755527 for the mark **AMERICAN DELI** pursuant to Lanham Act Section 1(b) for the following goods:

- “Spicy chicken wings, prepared breaded chicken pieces and French fries;” and
- “Hamburger sandwiches, submarine sandwiches, pizza, fried rice and bakery desserts.”

The application was published for opposition in the *Official Gazette* on October 2, 2007.

8. On November 1, 2007, Opposer filed a request seeking a thirty (30) day extension of time to oppose the pending Intent to Use Application for the AMERICAN DELI mark.

9. The Applicant’s application was filed as an intent to use application and hence, on the Opposer’s information and belief, Applicant does not have any prior use of the AMERICAN DELI mark in interstate commerce or otherwise.

10. On information and belief, Opposer believes that prior to November 16, 2005, Applicant never used the mark AMERICAN DELI in connection with any goods or services and, to date, has not yet used the mark in commerce in connection with any of the listed goods.

11. Applicant’s mark is identical and/or substantially similar to the **AMERICAN DELI Marks**, and therefore, when and if used in connection with the goods set forth in Applicant’s application, it is, *inter alia*, likely to cause confusion, or to cause mistake, or to deceive purchasers and potential purchasers within the meaning of 15 U.S.C. § 1052(d).

12. If Applicant is permitted to register and use the AMERICAN DELI mark, confusion in trade resulting in damage and injury to Opposer would be caused and would result as, *inter alia*, the applied-for mark is confusingly similar to Opposer’s **AMERICAN DELI Marks**.

13. Applicant's mark will severely interfere with the rights Opposer has gained in the **AMERICAN DELI Marks** including, *inter alia*, that a popular and identifiable good that Opposer's restaurants offer is, in fact, "chicken wings."

14. Applicant's mark, when used in association with the goods identified in Applicant's application, is likely to cause damage and dilution to Opposer and the **AMERICAN DELI Marks** in violation of 15 U.S.C. § 1125(c).


15. Registration of Applicant's mark will damage Opposer, as, *inter alia*, such registration will give color of exclusive statutory rights to the mark, AMERICAN DELI, to Applicant in derogation and violation of the prior and superior rights of Opposer.

16. AMERICAN DELI is unregistrable by Applicant as, *inter alia*, Applicant has never used any American Deli mark, any such use is subsequent to Opposer's use, and the mark is identical, confusingly similar, violative and/or in the natural zone of expansion of Opposer's **AMERICAN DELI Marks** that were previously used in the United States and have not been abandoned by Opposer.

WHEREFORE, Opposer, believes that it will be damaged by registration of U.S. Application Serial No. 78/755527, and therefore respectfully requests that the Trademark Trial and Appeals Board sustain this opposition and refuse registration of Applicant's mark.

Dated: December 3, 2007

Respectfully submitted,

By: 

Paul T. Kim
Winston T. Folmar
Locke Lord Bissell & Liddell, LLP
The Proscenium – Suite 1900
1170 Peachtree Street, NE
Atlanta, GA 30309
Tel: (404) 870-4600
Fax: (404) 872-5547

John W. MacPete
Locke Lord Bissell & Liddell, LLP
2200 Ross Avenue – Suite 2200
Dallas, Texas 75201
Tel: (214) 740-8000
Fax: (214) 740-8800

Counsel for Opposer, American Deli Plus, Inc.